

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

NAUTILUS INSURANCE COMPANY,)
Plaintiff,) August 15, 2023
)
-versus-) 2:22-1307
)
) Charleston, SC
RICHARD ALEXANDER MURDAUGH,)
SR., CORY FLEMING, MOSS &)
KUHN, PA, CHAD WESTENDORF,)
PALMETTO STATE BANK,)
Respondents.)

TRANSCRIPT OF STATUS CONFERENCE

BEFORE THE HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE, presiding

A P P E A R A N C E S:

For the Plaintiff: JAAN G. RANNIK, ESQ.
CLINTON T. MAGILL, ESQ.
Epting and Rannik LLC
46-A State Street
Charleston, SC 29401

For Respondent Murdaugh:
PHILLIP D. BARBER, ESQ.
Richard A. Harpootlian PA
1410 Laurel Street
Columbia, SC 29201

For Respondent Fleming:
THOMAS A. PENDARVIS, ESQ.
Pendarvis Law Office
500 Carteret Street, Suite A
Beaufort, SC 29902

For Respondent Moss & Kuhn PA:
MARYROSE P. WILLIAMSON, ESQ.
Hood Law Firm
172 Meeting Street
Charleston, SC 29401

For Respondent Westendorf:

CHRISTY F. ALLEN, ESQ.
Wills Massalon and Allen
PO Box 859
Charleston, SC 29402

For Respondent Palmetto State Bank:

G. TRENHOLM WALKER, ESQ.
THOMAS P. GRESSETTE, JR., ESQ.
Walker Gressette and Linton LLC
66 Hasell Street
Charleston, SC 29401

For Intervenor Satterfield and Harriott:

RONALD L. RICHTER, JR., ESQ.
Bland Richter
18 Broad Street, Mezzanine
Charleston, SC 29401

Court Reporter:

KAREN E. MARTIN, RMR, CRR
PO Box 835
Charleston, SC 29402

Proceedings reported by stenographic court reporter.
Transcript produced with computer-aided transcription
software.

1 Tuesday, August 15, 2023

2 (WHEREUPON, court was called to order at 10:03 AM.)

3 **THE COURT:** Good morning. Please be seated.

4 Okay. We're in the matter of Nautilus Insurance
5 Company vs. Murdaugh, and others, 2:22-1307. Let me kind
6 of run a lineup here and see who is here with us.

7 Counsel for Plaintiff Nautilus?

8 **MR. RANNIK:** Good morning, Your Honor. Jaan
9 Rannik for Nautilus. And with me here is Clinton Magill.

10 **THE COURT:** Very good.

11 Counsel for Murdaugh?

12 **MR. BARBER:** Your Honor, Phillip Barber here for
13 Mr. Murdaugh.

14 **THE COURT:** Very good.

15 Counsel for Defendant Fleming?

16 **MR. PENDARVIS:** Thomas Pendarvis and Chris
17 Lempesis here, Your Honor.

18 **THE COURT:** Thank you.

19 Counsel for Defendant Moss & Kuhn?

20 **MS. WILLIAMSON:** Maryrose Williamson, Your
21 Honor, for Moss & Kuhn.

22 **THE COURT:** Very good.

23 Counsel for Defendant Westendorf?

24 **MS. ALLEN:** Christy Allen for Defendant
25 Westendorf.

1 **THE COURT:** Very good.

2 Counsel for Palmetto State Bank?

3 **MR. WALKER:** Good morning, Your Honor. Trenholm
4 Walker. And with me is my partner, Tom Gressette.

5 **MR. GRESSETTE:** Morning, Your Honor.

6 **THE COURT:** Good to have you here.

7 And for Intervenor Satterfield?

8 **MR. RICHTER:** Ronnie Richter here for the
9 Satterfields, Your Honor.

10 **THE COURT:** Thank you very much.

11 Let me just start at the outset and say that,
12 you know, I have on my docket about 500 civil and criminal
13 cases. And then I have foolishly undertaken an MDL with
14 20,000 plaintiff claims. So I'm busy.

15 And, fortunately, most cases sort of
16 self-manage. This one is not one of those. Okay? And we
17 have a little bit of a run-away train here. Because if I
18 count it right, we have nine pending motions. In my
19 category, that's a blizzard of filings. And looking at it
20 has indicated to me that this is one of those cases that
21 needs close case management on my part. So you folks are
22 going to be seeing more of me. And we're going to
23 organize this case in a way that's logical and coherent
24 and not chaotic.

25 So with that, let me first say that among the

1 last of those nine filings is a motion to amend the
2 complaint. And of course, under Rule 15, district courts
3 are admonished to liberally construe those provisions.
4 Under the scheduling order, I think July 28th was the
5 deadline for filing, and on that day the plaintiff filed a
6 motion to amend. So it was a timely filing under the
7 scheduling order.

8 At least one defendant has asked me to strike
9 the answer as being either untimely or futile. In the
10 world of judging, futility -- making a ruling on futility
11 without allowing the motion to amend is a fairly serious
12 act. And it's normally reserved to situations like
13 there's plainly a statute of limitations problem or other
14 issue which is sort of simple, direct, obvious, and is
15 futile. I wouldn't say the complaint falls in that
16 category.

17 So to simplify things, let me just say I'm
18 granting the motion to amend. Okay? Now, there are a lot
19 of implications to that.

20 Number one, all these blizzard of filings was
21 primarily focused upon the original complaint. Many of
22 those, frankly, in my view had merit because the discovery
23 and other efforts were well beyond what appeared to be the
24 face of the pleadings. And I'll in an order I will detail
25 those. But those are all moot now because we have an

1 amended complaint.

2 And something tells me that there'll be motions
3 to dismiss in response to the amended complaint. Might be
4 a lucky guess on my part. And I'm going to guess that
5 some of those claims are going to go away on a motion to
6 dismiss. But we'll deal with that.

7 We'll then have to determine those that survive
8 a plan for discovery. And we're not having unregulated
9 discovery in this case. We're not going to bury
10 defendants in an avalanche of documents in which there's
11 not plainly a basis in the case to do that.

12 So here's how we're going to do it. There's a
13 threshold question. And this primarily focuses on the
14 potential liability of Palmetto State Bank; that is, did
15 the bank do anything in the Satterfield matter to which it
16 is legally culpable? And if it didn't, all that other
17 stuff about connected to Laffitte and Murdaugh becomes an
18 academic question. So my first effort is going to be
19 doing discovery focused on the issue is there any basis
20 for Palmetto State Bank's liability? Okay? Regarding
21 Satterfield. And we're going to focus on Satterfield.
22 We're not going off --

23 Listen, folks I've had more to do with this case
24 than I ever wanted to do. Okay? And apparently, the
25 entire bar of South Carolina is employed in this effort.

1 Congratulations. I'm going to get the same salary. You
2 guys at least make a dollar. I'm glad for everybody.

3 And I know a good bit about the case that I
4 wouldn't normally know. I tried the Laffitte case for two
5 weeks. And I've counseled Mr. Fleming, know I'm
6 sentencing him today. So I've had a considerable amount
7 of information related to this case.

8 But there might be information that we'll
9 discover and will be disclosed in discovery, I don't know.
10 And that might make some of the plaintiff's claims more
11 plausible than they appear to me right now based on what I
12 know. Hopefully, that's why we do discovery. We try to
13 figure out what in fact -- you know, what can the
14 plaintiff actually establish? Pleading -- making
15 pleadings on a complaint is the easy part. Actually
16 proving it is another challenge.

17 So let's talk a little bit about how we're going
18 to manage this initial stage of discovery on Palmetto
19 State Bank's potential culpability. There are allegation
20 in the complaint, Mr. Rannik, that, for instance, that
21 Westendorf's service as a personal representative was
22 within Palmetto's control. Okay. If true, that would be
23 an important fact. Okay? That's Paragraph 13 of the
24 complaint. There are, obviously, witnesses who could
25 potentially prove or disprove that allegation. Their

1 depositions need to be taken. If there are documents
2 associated with that allegation, fine.

3 I'm talking about some of these, you'll have
4 others but these are ones that have gotten my attention.
5 Let me find a couple of these that were...

6 In the conspiracy count, Murdaugh and the
7 co-conspirators agreed to a scheme. I want to know who
8 were these people? We need to have them deposed. That's
9 a piece of information I don't have. I'd like to know if
10 there's any merit to that.

11 Murdaugh and co-conspirators agreed to a scheme
12 to deceive Nautilus into paying insurance proceeds. Did
13 Palmetto State Bank or Westendorf even know about
14 Nautilus. Nautilus was an excess carrier. Did they even
15 know about them? Maybe they did. I don't know.

16 Falsely representing to Nautilus the existence
17 of an arm's length lawsuit. Who made that representation?
18 Westendorf? Palmetto State Bank? Who did that? Were
19 they co-conspirators? Did they join, did they have a
20 common scheme? What was that common scheme or plan? What
21 was that agreed upon conspiracy?

22 There are allegations that the bank had a
23 fiduciary duty to Nautilus. Where did that come from?
24 Had a duty to Nautilus, where did that duty derive from?

25 Those are the kind of facts I want sorted out

1 before we go any further about looking beyond the
2 Satterfield scheme. And if Palmetto State Bank and/or
3 Westendorf didn't do anything wrong regarding having no
4 civil liability, then the fact that there were other
5 frauds committed by other persons who had a tie to
6 Palmetto State Bank then becomes, in my view, a legal
7 irrelevance.

8 So we're going to control, we're going to narrow
9 in and focus the initial round of litigation and discovery
10 on those issues.

11 Mr. Rannik, tell me what kind of deponents you
12 envision to prove this? And which ones have you deposed
13 and which ones do you need to depose?

14 **MR. RANNIK:** Thank you, Your Honor. Certainly,
15 we've already deposed a 30(b)(6) at Palmetto State Bank,
16 which was Mr. Malinowski. And we've deposed Chad
17 Westendorf. We've also taken the 30(b)(6) deposition of
18 Moss & Kuhn. Your Honor, there will be others we would
19 like to depose. We would like to depose Mr. Murdaugh. I
20 don't know if we're going to manage that.

21 **THE COURT:** I'll help you.

22 **MR. RANNIK:** Thank you, Your Honor.

23 **THE COURT:** I think he's kind of at the end of
24 his line here on the Fifth Amendment, but we'll see. And
25 who else?

1 **MR. RANNIK:** We'd like to depose Mr. Fleming.

2 He's also currently pleading the Fifth Amendment.

3 **THE COURT:** Well, he's going to have until his
4 state charges are addressed, and I think he goes to trial
5 in September. So do you -- anyone else?

6 **MR. RANNIK:** Understanding the Court's
7 admonishment and recognizing the validity of it, we would
8 also like to take Mr. Laffitte's deposition.

9 **THE COURT:** I will limit it to the issues
10 related to the Satterfield case.

11 **MR. RANNIK:** Of course.

12 **THE COURT:** And to the extent you can show, A,
13 there was some civil liability and, B, it has some
14 plausible connection to these others, then I'm going to
15 let you do that. But that will be Stage No. 2. You've
16 got to get through the first one. And then I'm going to
17 let the bank and Westendorf file motion for summary
18 judgment on that issue. If that ends the case, to the
19 extent they don't survive or, for instance, if there's
20 some kind of a negligence claim that survives, that
21 wouldn't be part of a conspiracy, you see.

22 But I'm trying to get some control. So what
23 documents, if any, are -- might be relevant to this
24 Satterfield matter?

25 **MR. RANNIK:** Certainly, we've been working well

1 with counsel for Palmetto State Bank on certain emails,
2 Mr. Laffitte's and Mr. Westendorf's emails from 2018
3 onward to see if there was any discussion of Satterfield,
4 of Murdaugh, of Nautilus, any of this.

5 THE COURT: Was there?

6 MR. RANNIK: I don't know.

7 Tom, have we fully resolved that?

8 MR. GRESSETTE: Yes, sir. There is no document
9 email that references it. We've run multiple electronic
10 searches. I've reviewed them all. There are not any.

11 THE COURT: That doesn't really surprise me.
12 What I've learned, it may not be complete, Mr. Rannik,
13 about Mr. Westendorf's role, which appears in this scheme
14 to have been very different from Laffitte's role. Did not
15 engage the bank. Did not involve bank loans. Did not
16 involve borrowing from accounts in the bank. None of that
17 is present. It's very -- what I have been provided up to
18 now and seen up to now is very different. It doesn't mean
19 your theory isn't right. It's just what I know right now
20 about this and what I think is available to you, the
21 discovery.

22 There was a public trial. You got a lot of the
23 documents. I don't think I remember Satterfield being
24 even mentioned in the trial. If it was, it was only in
25 passing. So it seems to be a very distinct different

1 scheme.

2 And let me share with you a little insight I
3 have, Mr. Rannik, about these criminal acts. In all of
4 them, Mr. Murdaugh appears to have been the train
5 conductor. And people joined the crew and were complicit
6 in that. And they probably did things they wouldn't
7 normally have done following the lead of the conductor.
8 And they did things that are criminal and they are
9 suffering the consequence. So the common theme here is
10 Murdaugh.

11 I think you should depose Mr. Laffitte, if
12 you're able to. But I think you'll likely find he had
13 nothing to do with the Satterfield case other than to say
14 I'm too busy. He testified in trial, I believe he said I
15 was too busy. I didn't have time to do it and I suggested
16 Westendorf. Okay. That doesn't sound too much like a
17 criminal act to me or a civil liability act to me. But
18 there might be more to that. That's what discovery is all
19 about. I want to give you a chance to do that.

20 But are there documents, other than your talking
21 about emails that apparently don't exist, doesn't surprise
22 me at all, anything else?

23 **MR. RANNIK:** Yes, Your Honor. For example, one
24 of our theories is that the monies that Mr. Murdaugh
25 misappropriated in various instances eventually made their

1 way back to PSB in the form of paying down loans.

2 **THE COURT:** Yeah, but let me say that we're not
3 getting into that. I'm not impressed that that's part --
4 that's taking the loot from a theft elsewhere and paying
5 down loans, that isn't going to get you very far. You're
6 going to have to connect the bank more than that. I'm
7 going to tell you right now, I don't think that's a basis
8 for liability. Someone pays a loan with money, unless
9 they knew it was stolen money from the Satterfield case,
10 that doesn't impress me as having any kind of bridge to
11 it. So what else?

12 **MR. RANNIK:** Okay.

13 **THE COURT:** I'm hoping I'm giving you a little
14 guidance here. I'm trying to rein in what we're looking
15 at here.

16 **MR. RANNIK:** Thank you, Your Honor. There's a
17 conflict of interest policy that we have that discusses
18 the bank's policy on people serving as fiduciaries. There
19 are certain compliance docs that have been represented to
20 us that exist about what folks can do within that role and
21 employee guidelines that they're given about serving in
22 that role. We would like to have those documents.

23 **THE COURT:** Mr. Walker, have you got any problem
24 giving those documents?

25 **MR. WALKER:** None whatsoever.

1 **THE COURT:** I thought so.

2 Okay. That's given. What else? What's next?

3 **MR. RANNIK:** Your Honor, off the top of my head
4 as I sit here, those are what come to mind. I'm sure that
5 there will be --

6 **THE COURT:** I can't think of many that -- you
7 know, basically you're going to have to prove it through
8 witnesses that there was some conduct.

9 The bank's view, reading in these documents, is
10 that Westendorf was a kind of straw man. That he
11 basically brought in some check to endorse and he
12 basically had no involvement, didn't know about Nautilus,
13 didn't know about the scheme.

14 Mr. Fleming says he didn't know of the Nautilus
15 scheme. I don't know about that. I don't know. He
16 certainly seems closer to the game than Mr. Westendorf
17 does.

18 But, you know, you're going to have to -- you've
19 got some allegations in the complaint that if they're
20 true, the bank has got a problem. But you've got to prove
21 them. And these are facts I've become aware of. And who
22 do you say were -- you say there were these conversations,
23 agreed to this scheme? Did they meet? Did they converse
24 with each other? How did they come up with this scheme?

25 **MR. RANNIK:** Well, Judge --

1 **THE COURT:** I'm talking about Paragraph 28 of
2 the conspiracy count.

3 **MR. RANNIK:** Sure, and Judge, to be discovered.

4 **THE COURT:** Well, no, no. What you do in a
5 complaint, if you don't know, you say upon information and
6 belief. That's not what it says. It says they agreed to
7 a scheme. You signed it, Mr. Rannik. I expect you to
8 have some evidence, not to say I think that might have
9 happened. But you didn't say upon information and belief.

10 **MR. RANNIK:** And Judge, our basis here and our
11 theory is that this was a pretty sophisticated scheme
12 against Nautilus in our view. And it could not have been
13 done by Mr. Murdaugh alone. It required the involvement
14 of others. And that the others would all be unwilling
15 participants seems, to us, extremely unlikely.

16 **THE COURT:** That's a theory. What Mr. Fleming
17 asserts, and I've got this in the criminal case, is that
18 he did very little communicating with Nautilus. That
19 Mr. Murdaugh was the guy browbeating your adjustor and
20 intimidating the adjustor. There's some allegation of
21 blocking an entrance, the woman couldn't even leave the
22 room.

23 Mr. Murdaugh was not an employee of the bank.
24 Okay? And whether any -- whether the bank or
25 Mr. Westendorf had a role in that, you know, I did the

1 kind of work where I've dealt with carriers, and umbrella
2 carriers, and excess carriers. They are often very remote
3 to people who aren't inside the game. I mean, people
4 don't even know they exist. They're not the defendant.
5 And they're not even the primary carrier, they're the
6 excess carrier.

7 So I think you're going to need to demonstrate
8 that, A, people even knew they existed, and B, they
9 engaged in this scheme. So the question is do you have at
10 this point any evidence that anyone agreed with
11 Mr. Murdaugh to engage in a scheme to falsely represent to
12 Nautilus it was an arm's length lawsuit? Who else
13 communicated with Nautilus?

14 **MR. RANNIK:** So, Your Honor, at the meet -- this
15 would have been at the mediation. Also there was
16 Mr. Fleming and Mr. Murdaugh were actually in the same
17 room with Mr. Westendorf on the phone.

18 **THE COURT:** Right. I understand that Murdaugh
19 was sending hand signals to Mr. Fleming about what to do,
20 which is a little odd when he's the defendant. But
21 there's nothing about this case that surprises me anymore,
22 so I can't really say.

23 **MR. RANNIK:** And then --

24 **THE COURT:** But other -- I'm right now trying to
25 focus because this is where the blizzard of motions has

1 come between you and Palmetto State Bank is just what
2 evidence is there that there's culpability there? And
3 even if there's potential culpability of Westendorf, does
4 it extend to the bank; that is, was it a moonlighting job?
5 Or, as you allege, was he out operating under the control
6 of his senior people in the bank? Who were those people,
7 Mr. Rannik?

8 **MR. RANNIK:** They were Mr. Laffitte and Charlie
9 Laffitte, who are the two that --

10 **THE COURT:** Do you want to depose Charlie
11 Laffitte?

12 **MR. RANNIK:** Actually, yes, please, Your Honor,
13 that would be --

14 **THE COURT:** And I can't tell you people aren't
15 going to assert the Fifth. But, you know, beyond saying
16 it's okay to moonlight, do this, were they -- did they
17 even know Nautilus existed?

18 You know, Mr. Rannik, I've never heard of a slip
19 and fall being paid \$3.8 million. Okay? I've never heard
20 of that. And, you know, I'm sure the company has to look
21 a little internally regarding its own decision and its own
22 advice it got here. And trying to blame people who aren't
23 really responsible is not going to get you very far. Now,
24 whether they are and if they were part of the conspiracy,
25 have at them, Mr. Rannik, have at them. The bank says it

1 was unaware of Nautilus, didn't have any scheme or plan.

2 If that's true, they walk. Don't you agree on that?

3 **MR. RANNIK:** Your Honor, I would think to some
4 extent that they know there is an insurance company out
5 here who is available -- able to pay a judgment and they
6 are going to be involved. If they don't know the exact
7 identity of that insurance company, I don't know that that
8 would free them of liability.

9 **THE COURT:** Do they know that there's a scheme
10 to basically commit a fraud on the insurance company?
11 That's what happened here, right? There was a fraud on
12 the company. Murdaugh now acknowledges that it was a
13 fraud. Okay. Fine. But you've got to link it to the
14 bank that the bank had some knowledge that -- Cory Fleming
15 denies that he was aware that the dog didn't trip
16 Ms. Satterfield. I mean, he says he didn't know it
17 himself. This was all Murdaugh. Maybe that's not true.
18 Maybe they all were in it. But I'm going to press you to
19 the details here to prove, to connect the dots, did
20 Mr. Westendorf -- you've deposed Mr. Westendorf. What
21 does he say?

22 **MR. RANNIK:** He says he did exactly what
23 Mr. Fleming and Mr. Murdaugh told him to do.

24 **THE COURT:** And did he know about Nautilus?

25 **MR. RANNIK:** He knew about them to the extent

1 that, again, he was part of the mediation and they were
2 the only party left standing, so to speak. He also did
3 sign the documents. So when the Nautilus check came
4 through --

5 **THE COURT:** Well, of course, that's his duty.
6 He's a court officer. He's the PR. My question is was he
7 aware of the scheme to commit this fraud?

8 **MR. RANNIK:** And, Your Honor, he says, no, he
9 was not.

10 **THE COURT:** Do you have evidence that that
11 wasn't true?

12 **MR. RANNIK:** As to Mr. Westendorf, no, I don't
13 think that we do.

14 **THE COURT:** I'm just, you know -- listen,
15 this -- you know, you've got to vigorously represent your
16 client. Your client was a victim of a fraud. And you're
17 looking for people capable of compensating your client for
18 its injuries. I fully respect that.

19 But it's not an open anybody you can find. And
20 we're not going to bury defendants in discovery on -- and
21 I thought some of the early discovery requests of the bank
22 were way over the top. I would have sustained their
23 motions. But right now, I'm trying to bring you in
24 because I want to give you a chance to prove the gravamen
25 of your claims. Because if they are, have at them. If

1 not, tell them good-bye. Okay? I mean, basically -- and
2 I want to do that early so we don't spend a lot of money
3 and time on issues that aren't particularly important.

4 So we're going to be meeting. I want y'all to
5 confer to see if you can agree on an initial stage of
6 discovery. I want you to share it with me. If you can't,
7 y'all both share with me what you want to do and I will
8 enter an order, basically, what I think is the right thing
9 to do. But I'm trying to stage this discovery. Okay?

10 Among the blizzard of filings, someone raised
11 the waiver of attorney/client privilege and then there was
12 a response. But it was done as sort of an after the fact,
13 kind of -- it wasn't done in a coherent way. What was the
14 privilege, scope of any waiver, et cetera.

15 Mr. Rannik, if you believe that Palmetto State
16 Bank has waived its attorney/client privilege, you need to
17 file a specific motion and identify the basis of that. I
18 will have the bank respond. And I will -- but this kind
19 of doing it in a reply brief or response is just not the
20 way we're going to have a coherent presentation of this
21 issue. What I've read so far, I'm pretty skeptical that
22 that's a basis for an attorney/client waiver. But I want
23 to give you a full chance to brief it. And perhaps you
24 can, with that opportunity in a coherent way, you can
25 present it more carefully.

1 The party claiming the privilege has a duty to
2 prove it, right? It's a privilege that hasn't been
3 waived. But you've got a burden to attack it. You've got
4 to go in and say -- and what you provided -- of course, I
5 was present during the trial. I didn't think any of that
6 waived the attorney/client privilege. And to the extent
7 that, you know, that there is any waiver, you've got to go
8 to the question of what the scope of that waiver was,
9 because you can have a limited waiver, right?

10 So if you want to do it, you need to start over
11 and do it in a straight up brief with attack it detailing
12 the issue. Let the bank respond. And then we'll sort it
13 out. Okay?

14 **MR. RANNIK:** Thank you, Your Honor. Thank you.

15 **THE COURT:** So right now, I'm mooting all those
16 issues so we're not going to address it. There's some
17 briefing on it, but it's not comprehensive so I want to do
18 it that way.

19 Mr. Walker, anything about the plan I have suit
20 you? Any concerns you have?

21 **MR. WALKER:** I welcome it. And as I understand
22 it, we're going to take these discovery motions, put them
23 on the shelf. We're going to see if Nautilus can connect
24 the dots. And if they do, you may give them the green
25 light to go.

1 **THE COURT:** You've got it. Stage One has got to
2 be threshold liability. And if there's not threshold
3 liability, Laffitte and Murdaugh are irrelevant players.

4 **MR. WALKER:** Motion to amend granted. We will
5 withdraw our motion for summary judgment or you can moot
6 it.

7 **THE COURT:** I am going to moot it before you get
8 back to your office.

9 **MR. WALKER:** And just so we can be on the same
10 page and facilitate this, rather than file motions to
11 dismiss, I anticipate we will agree to this discovery so
12 that Nautilus can take the depositions they want and then
13 we'll move for summary judgment.

14 **THE COURT:** You can do it either way. Some
15 issues could potentially go away by way of a motion to
16 dismiss. But some lawyers wait until summary judgment to
17 have a full record so they don't on a technicality on
18 motions to dismiss. So I will tell you, not -- the whole
19 case is not going to go away on a motion to dismiss.

20 **MR. WALKER:** I didn't think so.

21 **THE COURT:** It may be more suitable to dispose
22 of everything. You're not waiving anything by not filing
23 a motion to dismiss. And I would put you on a pretty
24 tight schedule for doing it. The problem is some of these
25 witnesses may not be immediately available to you.

1 **MR. WALKER:** Understand.

2 **THE COURT:** We've got to sort it out.

3 Mr. Rannik, I want to help you with this. I'm
4 glad to issue orders --

5 **MR. RANNIK:** Thank you.

6 **THE COURT:** -- directing these prisoners, for
7 instance, to be made available. I can't control if they
8 assert the Fifth or not. But some of them, I think it
9 might be a fair question about whether they've already
10 been convicted of this, whether there are any Fifth
11 Amendment immunity left. And I'm prepared to deal with
12 that.

13 And to the extent you encounter objections, you
14 need to file motions to enforce your subpoenas. And I
15 will determine whether there's some merit to whatever
16 defenses they have. But again, even if I require them to
17 appear, every citizen has a right to assert the Fifth
18 Amendment, as you will likely encounter in some of these.

19 But I think you need to pursue the case. You
20 know, both Mr. Fleming and Mr. Murdaugh still face state
21 charges related to this. So that -- I think it would be
22 unlikely their lawyers would allow them to testify. But
23 once, for instance with Fleming, if his -- I'm told he's
24 planning to plead in state court and that would be likely
25 in September. I'm not sure there would be any Fifth

1 Amendment immunity left after that. So we'll give you the
2 time to do it. And whatever schedule we have, if you
3 encounter problems, I want to give you a chance to do your
4 best. Some people may just -- who aren't charged can
5 assert the Fifth and you can't make them testify. For
6 those who are parties to this case, in a civil case that's
7 an inference against the witness.

8 Let me turn, if I -- so, basically, what I'm
9 doing is I'm granting the motion to amend and moot all
10 those motions. They are denied without prejudice as moot
11 all to be raised again, if necessary.

12 There is this motion by Mr. Murdaugh that the
13 Satterfields are a necessary party. Mr. Barber, is that
14 your idea?

15 **MR. BARBER:** Well, Your Honor, that is our
16 position is that there's a judgment against him for
17 stealing the exact same money that Nautilus says, no, was
18 in fact stolen from us and not them.

19 **THE COURT:** Yeah. The problem here is a
20 plaintiff is the master of his complaint. Okay? He gets
21 to choose who he sues. And I don't think it's a necessary
22 party and I'm going to deny your motion. And I don't --
23 and I think Mr. Murdaugh's role in this is a kind of
24 dubious voice for this issue anyway. But, you know, if
25 Nautilus wanted to pursue that, that's something Nautilus

1 could potentially do. But it's not up to Mr. Murdaugh.
2 They are not a necessary party. This case can be
3 addressed without them. And I will enter an order today
4 denying that motion.

5 Okay. Are there other matters I need to address
6 now? Mr. Rannik?

7 **MR. RANNIK:** Judge, I don't think any additional
8 matters. I would like to, if I may, just clarify one
9 thing that I said earlier. Of course, so much of the
10 difficulty in Nautilus' proving of its case is that
11 witnesses won't testify, witnesses won't admit they, you
12 know --

13 **THE COURT:** Let me give you one that really
14 stuns you. Witnesses sometimes don't tell the truth.
15 Amazing, isn't it? It happens. Okay?

16 **MR. RANNIK:** And the difficulty then is we're
17 forced to prove with circumstantial evidence what it is
18 we're alleging. So when I said that Mr. Westendorf, we
19 don't have evidence that he was involved in, you know, a
20 conspiracy, we don't have direct evidence. He hasn't
21 admitted it. I would contend we have circumstantial
22 evidence that his failures were so gross that it tests
23 credulity as to whether he didn't know that there was
24 something more afoot.

25 **THE COURT:** I'm glad at summary judgment to

1 address that issue.

2 **MR. RANNIK:** Exactly. I just wanted to say that
3 for the record. Thank you, Your Honor.

4 **THE COURT:** And we've got to see what other
5 evidence, sometimes the circumstantial evidence points in
6 a more direct way even in the absence of it. I do
7 recognize your problem. But the absence of evidence may
8 be that your theory isn't right. That's another theory.
9 Okay? But I want to give you every chance to develop it.
10 And I'll work with you to help you to help facilitate
11 that. And then we'll have a fulsome record on the
12 potential bank liability. And either they're in or not.
13 Right?

14 Mr. Walker, anything further?

15 **MR. WALKER:** Nothing from the bank, Your Honor.
16 Thank you very much for channeling this case.

17 **THE COURT:** Well, I'm going to do my best.
18 We'll see. I've got to pay more attention to it.

19 Sometimes, you know, some very dutiful judges
20 every morning go into the office and look at filings. I
21 am not among those.

22 And considering in my MDL I have about a hundred
23 filings a day, it would be impossible to do. So every
24 once in a while, I have -- I get snake bit when I have
25 seven or eight motions pending. I usually rule on

1 motions. And I discover that a number of them still
2 haven't been fully briefed, they're coming in, the
3 extensions, it's crazy.

4 But I'm not going to let that happen again in
5 this case. I'm going to stay on top of it. To the extent
6 it's necessary, we will get together. And this is going
7 to be a significant case-managed litigation.

8 Okay. Other counsel? Y'all are earning money.
9 Mr. Barber?

10 MR. BARBER: Thank you.

11 THE COURT: I'm not sure you're earning your
12 money, but go ahead.

13 MR. BARBER: I just wanted to alert the Court
14 for case management purposes that in response to the
15 second amend complaint that Mr. Murdaugh is going to
16 assert statute of limitations defense. And that it may be
17 best if that's addressed in an early stage because it's a
18 straightforward, dispositive issue.

19 THE COURT: Okay. I think fair enough. Are you
20 alleging that they knew about the fraud beyond, what is
21 it, three years?

22 MR. BARBER: Exactly, Your Honor. The current
23 complaint says -- uses the phrase irregularities
24 throughout July, that they became aware of them in July of
25 '21. The discovery indicates that the plaintiff's file,

1 they were aware of the irregularities from the beginning.
2 And there does not appear to be any basis to apply the
3 discovery rule.

4 THE COURT: Okay. We'll -- Mr. Rannik, on
5 notice. Here it comes. It won't be the last motion you
6 get. Very good.

7 Any other counsel have anything they want to
8 bring to my attention?

9 (There was no response.)

10 THE COURT: Crickets. I'd keep my head down,
11 too, if I were y'all.

12 Okay. Folks, we will continue to talk. I look
13 forward to these filings.

14 Mr. Rannik, today will you file your amended
15 complaint?

16 MR. RANNIK: Thank you.

17 THE COURT: And let's get moving.

18 | This hearing is adjourned. Thank you.

19 MR. RANNIK: Thank you, Your Honor.

20 MR. WALKER: Thank you, Your Honor.

21 (WHEREUPON, court was adjourned at 10:39

22 | * * *

23 I certify that the foregoing is a correct transcript from
24 the record of proceedings in the above-entitled matter.

25 s/Karen E. Martin
Karen E. Martin, RMR, CRR

8/21/2023

Date

Karen E. Martin, RMR, CRR
US District Court
District of South Carolina